

Madison Metropolitan School District
Legal Services Department

Procedure Manual
Sexual Harassment and Sexual Misconduct
Policy 8012A

Conduct Occurring on or after August 14, 2020

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1. Introduction

- 1.1. Purpose:** This Procedure Manual (“Manual”) supports the Madison Metropolitan School District’s (“District”) Sexual Harassment (Title IX) Board Policy #8012A (“Policy”). This Manual outlines the procedures for the prompt and equitable resolution of complaints alleging sexual harassment, sexual misconduct and retaliation prohibited by the Policy and Title IX of the Education Amendments of 1972 (“Title IX”).
- 1.2. Title IX Coordinator:** The Title IX Coordinator¹ is responsible for coordinating the District’s efforts to comply with and carry out the District’s responsibilities under Title IX and its implementing regulations to investigate, stop, prevent, and remedy sexual harassment, sexual misconduct, and retaliation.
- 1.3. Title IX of the Education Amendments of 1972 (Title IX):** As a school district receiving federal financial assistance, Title IX applies to the District, including all of its schools, educational programs, and activities. Title IX states that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” The Title IX Coordinator may be contacted at the following:

Title IX Coordinator
Madison Metropolitan School District - Legal Services
545 West Dayton Street, Room 104
Madison, WI 53703
608-663-1868
Email: kecook@madison.k12.wi.us

2. Definitions

- 2.1. Advisor.** All parties have the right to an advisor of their choice present during the process outlined herein, including any related meeting, or proceeding.
- 2.2. Complainant.** Any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this policy. In the case of dependent students, a parent/guardian may file a complaint on their behalf. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party in the complaint.
- 2.3. Confidentiality.** Individuals who report to any District employee cannot be assured absolute confidentiality. However, information provided in the report and in any subsequent, related proceeding will only be shared with those individuals who have a need to know to fulfill obligations consistent with District policies or laws.

¹ In certain circumstances, the Title IX Coordinator’s designee will take on some of the responsibilities of this position.

- 2.4. Consent.** Consent is an affirmative nonverbal act or verbal statement expressing consent to sexual activity by a person that is informed, freely given, and mutually understood. It is the responsibility of person(s) involved in sexual activity to ensure that he/she/they have the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout the sexual activity and can be revoked at any time. Lack of protest or resistance does not mean consent, nor does silence mean consent. Consent to one act by itself does not constitute consent to another act. The existence of a dating relationship between the persons involved, or the fact of past sexual relations, should never by itself be assumed to be an indicator of consent. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.
- 2.5. Covered Individuals.** All employees, students, contractors, consultants, vendors, volunteers, visitors, applicants for employment or members of the District’s Board of Education are covered individuals and subject to this Policy.
- 2.6. Days.** When used to compute a period of time, the reference will be to calendar days, with day one being the day after the triggering act or event. For example, if something occurs on January 1st, then January 2nd would be day one and January 3rd would be day 2, and so on. If the last day of the time period ends on a Saturday, Sunday, or holiday observed by the District, the last day for deadline purposes shall be the next business day.
- 2.7. Decision-maker.** Person with the authority to make the determination regarding whether this Policy was violated, what discipline/sanction is appropriate, and whether or not a complaint is dismissed.
- 2.8. District.** Throughout this document the word “District” refers to the Madison Metropolitan School District.
- 2.9. Education program or activity.** Locations, events, or circumstances where District exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.
- 2.10. Final Determination.** A conclusion by the preponderance of the evidence that the alleged conduct did or did not violate this Policy.
- 2.11. Formal Complaint.** Document submitted by a Complainant, their parent/guardian, or signed by the Title IX Coordinator, alleging a violation of this Policy. A Formal Complaint is considered a request that the District investigate the allegation(s) according to its procedures.
- 2.12. Investigator.** Person or persons assigned by the District to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report and file of directly related evidence.

- 2.13. Mandated Reporter.** An employee of the District who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator and/or their supervisor.² All employees of the District are Mandated Reporters. A Mandated Reporter must promptly share with the Title IX Coordinator, Title IX Designee, Department Head, and/or School-Based Administrator all known details of a report made to them during their employment. Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.
- 2.14. Notice.** An employee, student, parent/guardian, or third-party informs the Title IX Coordinator or school-based administrator, or department head of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- 2.15. Preponderance of the Evidence.** The standard used to determine if the allegations in the complaint are true. A preponderance of the evidence means that the evidence submitted shows that it is more likely than not that the act(s) of discrimination/harassment did occur and more likely than not the Respondent(s) committed the act.
- 2.16. Probable Cause.** There are reasonable grounds for belief supported by facts and circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination/harassment probably has been or is being committed.
- 2.17. Report.** A person giving a spoken or written account of something that one has observed, heard, and/or done, which may be a violation of this Policy. While only the individual directly harmed may file a formal complaint, anyone may make a report. A report triggers District responsibility to make efforts to follow-up with the individual(s) directly impacted by an action(s) that may violate this Policy.³
- 2.18. Respondent.** An individual who has been reported as having engaged in conduct that, if true, is a violation of this Policy.
- 2.19. Retaliation.** Any adverse action to employment, educational program or activity, or adverse change in employment, educational program or activity, taken against a Covered Individual for having made a complaint or report of Sexual Harassment or Sexual Misconduct, whether made internally, or externally with a federal, state, or local agency; or for participating, aiding, or refusing to participate in an investigation, proceeding or hearing related to a report or complaint of Discrimination, Harassment, Sexual Harassment or Sexual Misconduct under this Policy, whether internal, or

² Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

³ The District may not follow up on reports where it cannot determine who was impacted by the alleged action(s) which may have violated this Policy. The District must be able to reasonably identify the impacted individual(s) in order to take additional steps regarding the Report.

external with a federal, state, or local agency, is strictly prohibited. An adverse action can include discipline or denial of access to a service or benefit. For purposes of Title IX, intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

2.20. Title IX Liaison. A District staff person who works in a school and acts as the Title IX Coordinator's designee for certain tasks related to this Policy.

2.21. Sexual Harassment. The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Wisconsin regard Sexual Harassment as an unlawful discriminatory practice. The District has adopted the following definition of Sexual Harassment, consistent with Title IX, in order to address the unique environment of an educational setting.

Conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
- 3) "Sexual assault," defined as:
 - (i) Sex Offenses, Forcible - Any sexual act or attempted sexual act directed against a Complainant, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.
 - Forcible Rape - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of Complainant, without the consent of the Complainant.
 - Forcible Sodomy - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - Sexual Assault With An Object - To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - Forcible Fondling - The touching of the private body parts of another

person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- (ii) Sex Offenses, Nonforcible - Nonforcible sexual intercourse.
 - Incest - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Wisconsin law.
 - Statutory Rape - Nonforcible sexual intercourse with a person who is under the statutory age of consent of 18 years old with someone who is 18 or older.

- 4) "Dating violence," defined as: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

- 5) "Domestic violence," defined as: a felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner of the Complainant;
 - By a person with whom the Complainant shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Wisconsin;
 - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) "Stalking," defined as: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

For the purposes of this definition:

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

2.21. Sexual Misconduct. A form of sex or gender-based discrimination or harassment that includes any conduct that is sex-based or of a sexual nature that is unwelcome or inappropriate and unreasonably interferes with, limits, or denies an individual access to educational or employment benefits, or opportunities.

2.21.1. Grooming. When someone builds a relationship, trust and/or emotional connection with a child or young person so they can manipulate, exploit and/or abuse them.

2.21.2. Inappropriate Touching. Knowingly or intentionally making or attempting to make unwelcome physical contact of genitals, anus, groin, or breasts, whether direct or indirect through clothes or with an object or any other intentional bodily contact in a sexual manner.

2.21.3. Sexual Electronic Communication. Intentionally viewing, creating, possessing, or sharing sexual language or images/recordings without the consent of one or more parties.

2.21.4. Sexual Bullying. Severe, pervasive, or persistent unwelcome conduct of a sexual nature or based on a person's sexuality or gender that is based on an imbalance of power or power and control with an intent to cause harm. Such behavior has or can be reasonably predicted to have one or more of the following effects: placing the student in reasonable fear of harm to the student's person or property; causing a substantially detrimental effect on the student's physical or mental health; substantially interfering with the student's academic performance; or substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

2.21.4.1. Sexual Exploitation. Taking non-consensual or abusive sexual advantage of another person for their own benefit or the benefit of a third party (e.g. for the purpose of sexual gratification, financial gain, personal benefit or advantage), or any other non-legitimate purpose.

2.21.4.2. Exposure/Voyeurism/Masturbation. Non-consensually exposing

one's genitals, anus, buttocks, or breasts in a sexual nature; watching others when their body parts are exposed without their consent; or touching one's own genitals for sexual pleasure.

2.22. Title IX Coordinator. District employee designated to ensure compliance with Title IX and the District's Title IX program. References to the Title IX Coordinator throughout this policy may also include a designee of the Title IX Coordinator for specific tasks.

2.23. Trauma-Informed Care. A trauma-informed approach reflects an understanding of trauma and emphasizes creating services and programs that are sensitive and directly responsive to the trauma that many victims and survivors experience following a violent crime. Trauma-informed programs identify and limit potential triggers to reduce re-traumatization and protect mental and emotional health.

2.24. Visitor(s). This includes persons, agencies, vendors, contractors, and organizations doing business with or performing services for the school system as well as volunteers and persons coming to school events.

3. Initial Stage (Notice – Formal Complaint)

3.1. Notice

All District Staff are required to report to the Title IX Coordinator any sex/gender-based discrimination, sex/gender-based harassment, sexual harassment, sexual misconduct, and retaliation concerns they become aware of in the scope of their role, whether it involves students, adults, or conduct between adults and students. Staff follow the reporting procedures outlined below to notify the District. A failure to report such incidents may result in discipline/sanctions, up to and including termination and removal from and prohibiting access to District premises, as appropriate.

Notice of potential violations of this Policy may be made using the following options:

- 1) Give verbal notice to, the Title IX Coordinator, their designee, department head, or school-based administrator. A report may be made at any time (including during non-school hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed below.
- 2) Report online, using the reporting form posted at [insert URL]. Reports may be made anonymously. While the District tries to provide supportive measures to all Complainants, it is often not possible with an anonymous report. Making a report is different from filing a Formal Complaint.

Reports of alleged Policy violations may be made to the following:

School Principal

Contact information for each school principal can be found on the District website (<https://www.madison.k12.wi.us/>) by selecting the specific school.

Department Heads

Contact information for each department head can be found on the District website (<https://www.madison.k12.wi.us/>) by selecting the specific department.

Human Resources Department

Address: 545 West Dayton Street, Room 133

Phone: 608-663-1693

Reports, complaints, or notices of alleged Policy violations, or inquiries about or concerns regarding this Policy, may be made to the Title IX Coordinator:

Title IX Coordinator

Legal Services Department

Address: 545 West Dayton Street, Room 104

Phone: 608-663-1868

Email: kecook@madison.k12.wi.us

Web: <https://www.madison.k12.wi.us/families/titleix>

When a report is received the Title IX Coordinator will contact the Complainant, even if the Complainant is not the person who made the report. The Title IX Coordinator will discuss supportive measures with the Complainant; inform the Complainant that supportive measures are available, as appropriate, without filing a Formal Complaint; and explain the process for filing a Formal Complaint.

3.2. Initial Assessment

Upon receiving a complaint or notice, the Title IX Coordinator⁴ conducts an initial assessment. The purpose of this initial assessment is to determine if, based on the report received or the Formal Complaint filed, the Policy applies or the allegations, if true, fall under a different District policy. The steps in an initial assessment may include:

- Communication with the Complainant to determine the following:
 - better understand the allegations.
 - Whether the Complainant prefers to file a supportive response or pursue a formal complaint.
 - If a supportive response is preferred, the Title IX Coordinator works with the Complainant and the school or department to put in place supportive measures (See Section 7.5). A formal complaint is not filed, and an investigation does not occur, though the Complainant may elect to file a formal complaint later, if desired.
 - If a Formal Complaint is filed, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX.
- If the allegations in a formal complaint fall within the scope of this Policy, an investigator will be identified, and the investigation will begin.
- If the allegations in a formal complaint do not fall within the scope of this Policy, the Title IX Coordinator will “dismiss” the aspects of the complaint that do not fall

⁴ If circumstances require, the Legal Counsel or Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Title IX Coordinator, or the Title IX Coordinator be otherwise unavailable or unable to fulfill their duties.

within the scope of this Policy and inform the Complainant. Dismissing a complaint under this Policy is a procedural requirement and does not limit the District's authority to address a complaint with an appropriate process and remedies, under other policies.

3.3. Complainant does not want to proceed

Once a report is received or at any point during the investigation, the Complainant may decide they do not want an investigation. If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator. The Title IX Coordinator will evaluate the request in light of the duty to ensure the safety of the school community and to comply with state or federal law. The District may be compelled to act irrespective of a Complainant's wishes.

While the District's ability to respond may be limited, if it chooses to proceed, the District cannot compel the Complainant to participate. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

In cases in which the Complainant requests no formal action and the circumstances allow the District to honor that request, the District will offer supportive measures, and remedies to the Complainant, but will not otherwise pursue formal action.

3.4. Formal Complaint

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the District) that contains the Complainant's, or their parent/guardian's, physical or digital signature, or otherwise indicates that the Complainant, or their parent/guardian, is the person filing the complaint, and requests that the District investigate the allegations.

If a complaint is submitted in a form that does not meet this standard, the Title IX Coordinator, or their designee, will contact the Complainant, and/or their parent/guardian, to ensure that it is filed correctly.

Where the Title IX Coordinator determines there is a risk to the health and/or safety to the Complainant or other members of the District's community, the Title IX Coordinator may file a Formal Complaint even if the Complainant has chosen to not file one.

4. Investigation Stage

4.1. Pre-Investigation Notice

The Title IX Coordinator, or Investigator, will provide written notice of the

investigation and allegations (the “NOIA”) to the Complainant and the Respondent when a Formal Complaint is filed and before the investigation begins.

The NOIA will include:

- A meaningful summary of all allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the District presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the District’s policy on retaliation,
- Information about the privacy of the process,
- Information indicating that each party may have an Advisor of their choosing,
- A statement informing the parties that the District’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of any allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official District records, or emailed to the parties’ District-issued email, designated accounts or emails associated with the parties’ official records. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

4.2. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on the parties.

Investigations conducted by MMSD will result in an investigative report that fully summarizes the investigation, all witness interviews, and addresses all relevant evidence. Prior to completion of the Title IX sexual harassment investigative report, the investigator will send each party and their advisor for inspection and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. The parties will have ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. The finalized investigative report will be provided to the parties and their advisors.

Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of the District are expected to cooperate with and participate in the District's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside the school community are encouraged to share what they know about the complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

Delays in the Investigation Process and Interactions with Law Enforcement

The District may undertake a delay in its investigation if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The District will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The District will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the District will implement supportive measures as deemed appropriate.

District action(s) or processes may be delayed, but are not stopped by, civil or criminal charges involving the underlying incident(s). Dismissal or reduction of those criminal charges may or may not impact the District's action(s) or processes.

4.3. Finding

The investigator completes a report with their findings regarding whether the allegations in the formal complaint occurred. The investigator does not determine if the Policy was violated or if any sanctions are warranted. These decisions are made by the Decision-maker.

As mentioned above, prior to completing their report, the investigator provides the parties a copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the District does not intend to rely upon in reaching a determination, for a ten (10) day review and comment period. The parties may elect to waive the full ten days. The Investigator(s) also shares the report with the Title IX Coordinator and/or Legal Counsel for their review and feedback.

5. Decision Stage

5.1. Decision-Maker Designation

After the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter to a Decision-maker. The Decision-maker(s) will not have had any previous involvement with the investigation. Those who have served as Investigators, or Advisors, in the specific case, may not serve as Decision-makers. The Title IX Coordinator may not serve as a Decision-maker in the matter.

All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator no later than two (2) days after being notified of the identity of the Decision-maker. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial consideration of the evidence.

5.2. Process

After the District has sent the investigative report to the parties and before reaching a determination regarding responsibility, the Decision-maker will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The Decision-maker may make a determination that a question is not relevant and will explain to the party proposing the questions any decision to exclude questions as not relevant. The Decision-makers will issue a written determination regarding responsibility using the preponderance of the evidence standard. The Decision-maker's decision is based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy.

5.3. Decision

The Decision-maker must wait at least ten (10) days after the final investigation report is transmitted to the parties unless all parties and the Decision-maker agree to an expedited timeline, before making their determination. The written determination will

be simultaneously sent in a prompt and equitable manner to inform the parties and their advisors, including the parent(s)/guardian(s) of Respondent(s) and Complainant(s), of the following:

- The section(s) of the Policy alleged to have been violated;
- A description of the procedural steps taken from the receipt of the formal complaint through the end of the process, including any notifications made to the parties, interviews with parties and witnesses, site visits, other mechanisms used to gather evidence, and hearings held (if applicable);
- Findings of fact that support the determination;
- Conclusions regarding the application of the “findings of fact” to the alleged Policy violation(s);
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the District imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the District’s education program or activity will be provided by the recipient to the Complainant; and
- The Decision-maker will then determine whether the Respondent is responsible or not responsible for the Policy violation(s) in question.
- Procedures for appeal, including the bases upon which the parties may appeal.

5.4. Sanctions

As noted above, the written determination will include any disciplinary action that will be taken when an individual is found to have engaged in misconduct or retaliation as described herein in violation of the Policy.

The Decision-maker will review the statements and any pertinent conduct history provided by the appropriate administrator, depending on if the Respondent is a student or employee, and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent’s disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities.

Student Sanctions may include but are not limited to the following examples singly or in combination: Warning; Counseling; Exclusion from participating in extra-curricular activities or other school/district programs/activities; Alternative placement; Suspension: in-school, out-of-school, long term, short term, and/or extended; Expulsion; In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

Employee Sanctions may include but are not limited to the following examples singly or in combination: Warning (Verbal or Written); Performance Improvement Plan; Enhanced supervision, observation, or review; Required Training; Extended probation; Loss of Oversight or Supervisory Responsibility; Demotion; Transfer; Reassignment; Assignment to new supervisor; Suspension with or without pay; Termination; In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

Contractor, Consultant or Vendor sanctions may include but are not limited to the following examples singly or in combination: Removal from and prohibiting access to District premises, remedies of law, and/or remedies under their contract.

Volunteer sanctions may include but are not limited to the following examples singly or in combination: Rescinding their authorization to serve as a volunteer; Removal from and prohibiting access to District premises, remedies of law, and/or remedies under their contract.

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the District.

6. Appeal Stage

6.1. Designate Appeal Officer

If an appeal request is made, the Title IX Coordinator will assign an Appeal Officer. This person will not have had any previous involvement with the specific case. Those who have served as Investigators, Decision-makers, or Advisors for any party may not hear the appeal. The Title IX Coordinator may not serve as the Appeal Officer.

Any party may file a request for appeal (“Request for Appeal”) in writing to the Title IX Coordinator within 5 days of the delivery of the Notice of Outcome. The Request for Appeal will be forwarded to the Appeal Officer assigned by the Title IX Coordinator who determines if the request meets the grounds for appeal. This review is not a review

of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

6.2. Grounds for Appeal

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If the Request for Appeal does not meet any of the above listed grounds, that request will be denied, and the parties and their Advisors will be notified in writing of the denial and the rationale.

6.3. Process

If the Request for Appeal meets the allowable criteria, then the Appeal Officer will notify all parties. The party who initially requested then will be given 5 days to submit a response to the portion of the appeal that was approved.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds for appeal outlined above and either be denied or approved. If approved, it will be forwarded to the other party, who will submit their responses in 5 days.

Neither party may submit any new requests for appeal after this time period. The Appeal Officer will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than 10 days, barring unusual circumstances.

6.4. Decision

Appeal decisions defer to the original decision, making changes to the determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- Appeals are not intended to provide for a full reconsideration of the allegation(s) and evidence. In most cases, appeals are confined to a review of the written documentation or record of the original findings and decision and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Officer to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the determination and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all

such consultation will be maintained.

- Appeals granted based on new evidence should normally be remanded (returned) to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

When appeals result in no change to the determination or sanction, that decision is final. When an appeal results in a new determination or sanction, that determination or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures. In cases in which the appeal results in reinstatement to the District or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' District-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

6.5. Sanctions

Any sanctions imposed by the Decision-maker take effect following the appeal process. Supportive measures may remain in effect during an appeal process, subject to the same supportive measure procedures below.

7. Other Considerations

7.1. Advisors

All parties have the right to an Advisor⁵ of their choice present during the process outlined herein, including any related meetings or proceedings as the Advisor is eligible and available.⁶ For students, this Advisor can be someone in addition to their parent/guardian who may also be present with them for all meetings, interviews, and hearings within the resolution process. An advisor may be an attorney.⁷ The District does not recommend or compensate the parties for any costs associated with the Advisor they choose.

Advisor Violations of District Policy

All Advisors are subject to the same District policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings or meetings. Advisors should not address District officials in a meeting or

⁵ This could include an attorney, advocate, or support person. The law permits one Advisor for each party.

Witnesses are not entitled to Advisors within the process, though they can be advised externally.

⁶ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

⁷ The District cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the District is not obligated to provide an attorney.

interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee⁸ during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s). The parties are expected to ask and respond to questions on their own behalf throughout the resolution process.

If an Advisor oversteps their role or disrupts the process, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

Sharing Information with the Advisor

The District provides a consent form that authorizes the District to share such information directly with their Advisor. The parties must submit this completed form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the District is able to share records with an Advisor.

Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the District. The District may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the District's privacy expectations.

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured.

7.2. Dismissals

When a Title IX sexual harassment complaint is dismissed, the complaint will be evaluated for other policy violations and processed accordingly.

Dismissal (Mandatory and Discretionary)⁹

The District must dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the District and/or the District does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or

⁸ Subject to the state law provisions or District policy above.

⁹ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

- 4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the District.¹⁰

The District may dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint in whole or in part; or
- 2) The Respondent is no longer enrolled in or employed by the District; or
- 3) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the District will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the appeal procedures above. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

7.3. Jurisdiction

The Policy applies to the education program and activities of the District, to conduct that takes place within school or on property owned or controlled by the District, or at District-sponsored events. The Respondent must be a member of the District's community in order for the Policy to apply.

When the Respondent is not a member of the District's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator, or their designee. In addition, the District may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from District property and/or events.

When the Respondent is enrolled in or employed by another school/district, or institution of higher education, the Title IX Coordinator may assist the Complainant in liaising with the appropriate individual at that school/district or institution, as it may be possible to allege violations through that school/district's or institution's policies.

This policy can also be applicable to the effects of out-of-school misconduct that effectively deprives someone of access to the District's educational program. The District may also extend jurisdiction to out-of-school and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial District interest.

Withdrawal or Resignation While Charges Pending

Should a student Respondent permanently withdraw from the District, the resolution process ends, as the District no longer has disciplinary jurisdiction over the withdrawn student. However, the District will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects

¹⁰ Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

of the alleged sexual harassment and/or retaliation. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to the District unless and until all sanctions have been satisfied.

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the District no longer has disciplinary jurisdiction over the resigned employee. However, the District will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation. The employee who resigns with unresolved allegations pending is not eligible for rehire with the District, and the records retained by the Title IX Coordinator and Human Resources will reflect that status. Any state mandates for reporting of this resignation with respect to licensure or certification will be met. All District responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

7.3.1. Online Sexual Harassment and/or Retaliation

The policies of the District are written and interpreted broadly to include online manifestations of any of the behaviors prohibited in the Policy, when those behaviors occur in or have an effect on the District's education program and activities or use the District's networks, technology, or equipment. Although the District may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the District, it will engage in a variety of means to address and mitigate the effects.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the District's control will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

7.4. Recordkeeping

Records related to this policy shall be retained in accordance with the Wisconsin Records Retention Schedule for School Districts established by the Wisconsin Department of Public Instruction. See Board Policy 6361 "Retention of Records." However, if the Wisconsin Records Retention Schedule for School Districts allows relevant records to be maintained for less than seven years, these records will be maintained for a period of at least seven years.

7.5. Supportive Measures

The District will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation under the Policy. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. Supportive measures are designed to restore or preserve access to the District's education program or activity, including measures designed to protect the safety of all parties or the District's educational environment, and/or deter sexual harassment and/or retaliation. The Title IX Coordinator, or their designee, promptly makes supportive measures available to the parties upon receiving a report or a complaint. At the time that supportive measures are offered, the District will inform the Complainant, in writing, that they may file a formal complaint with the District either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant, and/or their parent(s)/guardian(s), to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

The District will maintain the privacy of the supportive measures so long as the privacy does not impair the District's ability to provide the supportive measures and will reduce the academic/occupational impact on the parties as much as possible. The District will implement measures in a way that does not unreasonably burden the other party.

Such measures are designed to restore or preserve access to the District's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Districts' educational environment, or deter sexual harassment or other conduct covered herein.

While the Complainant's wishes will be considered, a Respondent may not be unreasonably burdened by supportive measures, prior to a decision being made following an investigation, and the Title IX Coordinator will make final decisions regarding applicable supportive measures. Available supportive measures include, but are not limited to, the following:

- Check-In/Check Out (CICO) interventions
- Counseling or social work support at school
- Referral to the Employee Assistance Program
- **Safety Plan and No Contact Agreements:**
 - A Safety Plan is a plan designed to provide special safety supervision to the parties. The plan includes specific interventions which targets concerning behavior in order to minimize the risk of harm to the parties or others. A Safety Plan can provide flexibility in a party's access to educational/workspaces in order to feel safe and succeed academically/professionally. In cases of conduct covered herein, a Safety Plan may be appropriate to keep parties separate and safe. A Safety Plan may also prioritize elements of emotional safety and coping mechanisms.

- A No Contact Agreement is a directive by the District preventing the parties from contacting each other directly and/or indirectly. This helps to ensure the parties have no contact or communication and can include additional restrictions (such as location) to best facilitate the No Contact Agreement.
- If a Safety Plan and/or No Contact Agreement restricts access to school/workspaces or events, the plans should be equitably restrictive on all parties in a case prior to an outcome determination.
- Regardless of the outcome of a case, a continued Safety Plan and/or No Contact Agreement may be continued for the well-being of the parties.
- Extensions of time to complete assignments, modifications to course/work schedules, or any other course/work-related adjustments
- At all times the District reserves its right to remove Covered Individual Adult Respondents when it is necessary during the course of an investigation to ensure student/staff safety.

Supportive measures may be provided to a party before, during and following an investigation.

7.6. Time Limits

Time Limits on Reporting There is no time limit on providing reports or filing formal complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the District’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting on reports or formal complaints significantly impacted by the passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

Resolution Timeline The District will make a good faith effort to complete the resolution process, which begins when a formal complaint is received, within ninety (90) days, including any appeal. This time frame can be extended as necessary by the Title IX Coordinator.